**IN THE SUPREME COURT OF IOWA**

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SUPREME COURT NO. 16-1731
Polk County Case No. CVCV051620

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PAULA J. TYLER and MARK J. ALCORN,
Appellants/Petitioners

vs.

IOWA DEPARTMENT OF REVENUE,
Appellee/Respondent

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**APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY**
The Honorable Robert J. Blink

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# APPELLANTS' FINAL REPLY BRIEF

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## REPLY TO STATEMENT OF FACTS

Appellants, Paula J. Tyler ("Paula") and Mark J. Alcorn ("Mark"), stand on the Statement of Facts as set forth in their initial Brief to the Court.

## REPLY TO ARGUMENT

This Brief addresses two concepts discussed by Appellee, the Iowa Department of Revenue ("the Department"), in its prior briefing to the Court: (1) the Legislature's purpose in adopting Iowa Code section 450.1(1)(e), and (2) the State's interest in "proper child-rearing." Paula and Mark have sufficiently addressed the remaining points in the Department's Brief, so no additional response is warranted on those arguments at this time.

### I. THE STATUE LACKS A CONSTITUTIONALLY-ADEQUATE PURPOSE.

The Court should find that Iowa Code section 450.1(1)(e) lacks any constitutionally-sound purpose and must therefore be struck down. The Department has extensively argued that Paula and Mark are not similarly situated "with respect to the purposes of the law." (See Department's Proof Brief at 13–24.) In fact, all the parties and both of the lower courts have engaged in a fair amount of "rational speculation" about the purpose of the challenged statute. (See Appellants' Proof Brief at 21–40; see Department's Proof Brief at 25–41; see App. 36–37, 50–55; see App. 19-20 at 11-12; see

also App. 131 at 18:20–19:2 .) The goal in this dialogue, of course, is to determine whether at least one plausible justification for Iowa Code section 450.1(1)(e) exists that does not offend Iowa's Equal Protection Clause. Paula and Mark submit that the parties to the litigation cannot find any such justification.

This is illustrated, in part, by the shifting focus and justification for the disputed law through the course of these proceedings. For example, the Department previously argued in the proceedings below that the inheritance tax statute was unconcerned with and could not be justified by the "closeness of the relationship between decedents and their heirs or devisees." (See Department's DIA Brief at 11 ("The alleged affinity between a decedent and the decedent's former stepchildren, however, is not part of the legislature's motive in enacting section 450.1(1)(e). In fact, the closeness of the relationship . . . plays no role under Iowa's inheritance tax exemption scheme."); see also App. 134 at 31:9–11 ("Everything in the statutory inheritance tax scheme is based on a legal relationship. It is not based on closeness. . . .").)

For a time, the Department then argued that "close legal relations" were significant for the statute, but that promoting a "close personal relationship"

was emphatically not a purpose of the "stepchild" distinction. (Compare Department's District Court Brief at 12–13 ("The [statute] is rationally related to the legitimate state interest of promoting the development of close **legal relationships** . . . .") (emphasis added) with id. at 15–16 ("The Department does not contend that the challenged classification is premised on closeness of the **personal relationship** between the decedent and the beneficiary.") (emphasis added).)

The Department now argues that the State's purpose is, in part, to "engender[] close interpersonal relations in [a] blended family throughout the duration of the marriage." (See Department's Proof Brief at 21–22, 25–27; see also Department's District Court Brief at 12–13 (arguing that Iowa Code section 450.1(1)(e) "promotes close legal relations . . . within the family unit); but see App. 134 at 33:8–13 ("I don't believe this exemption has any effect on the creation or the termination of any of these legal relationships listed in Section 450.9."), App. 135 at 35:5–23.)

The Department has clearly struggled to maintain a consistent, tenable position on the purpose(s) of the challenged statute. To be sure, this is no fault of the Department. The Department previously stipulated that "[n]o previous 'stepchild' definition existed in Iowa Code chapter 450," and further that

"[t]here is no legislative history for the amendment." (See App. 123 at ¶ 4.) For its part, the Department has also distanced itself from the Iowa Legislature's actions with respect to Iowa Code section 450.1(1)(e). (See, e.g., id. (stipulating that "[t]he Department had no involvement in formulating the definition of "stepchild").) However, the lack of an articulable purpose for narrowing the "stepchild" inheritance tax exemption suggests that no purpose exists other than to raise tax revenue. (See App. 131at 18:2–6 (positing "the need to raise revenue" as a first justification for the disputed tax law).) As previously argued, this "purpose" does not justify a constitutional violation.

It is also significant that the Department has shuttled most of its "means-ends" arguments into its "similarly situated" analysis. Specifically, the Department has used the following justifications to argue that Paula and Mark are not "similarly situated with respect to the purposes of the law": "equitable distribution of the tax burden; promoting economic growth and a broader tax base; and promoting the development of close interpersonal relations in blended families." (See Department's Proof Brief at 22.) The Department uses these **same** proposed justifications to argue that the law is rationally related to legitimate State interests. (See id. at 25 (close

interpersonal relations), 35 (fair distribution of tax burden), 37 (promoting economic growth and stimulating a broader tax base.)

The effect here is to commit the very analytical error that has steered the Iowa Supreme Court away from reliance on the "similarly situated" analysis in the first place. See Varnum v. Brien, 763 N.W.2d 862, 884 n.9 (Iowa 2009) and authorities cited therein; see Qwest Corp. v. Iowa State Bd. of Tax Review, 829 N.W.2d 550, 561 (Iowa 2013) see LSCP, LLLP v. Kay-Decker, 861 N.W.2d 846, 860 (Iowa 2015); see Giovanna Shay, Similarly Situated, 18 Geo. Mason L. Rev. 581, 583–85, 587–88 , 624 (2011). (concluding that the "similarly situated" inquiry is both "redundant" and subject to abuse by litigants attempting to "circumvent the full rigor of equal protection analysis"). Paula and Mark previously discussed the risks and short-comings of truncating the full Equal Protection Clause analysis: the "similarly situated" inquiry is itself a broad reiteration of the complete analysis—not an independent test. The Department's argument to the Court simply confirms and underscores this error. These points invite the conclusion that the "stepchild" definition at issue here lacks any constitutionally-adequate purpose, and the Court must declare it invalid as violating Iowa's Equal Protection Clause.

## II. THE DEPARTMENT'S RELIANCE ON "PROPER CHILD REARING" IS INAPT.

The Department argues at many points in its Brief that the "stepchild" statute has the effect of incentivizing close interpersonal relationships within the blended family. (See Department's Proof Brief at 17–18, 21–23, 25–29, 31–35, 41.) The nexus to legitimacy, the argument goes, is that "[c]lose interpersonal relationships and stability within the blended family are vital to proper child-rearing." (See id. at 28.) The argument continues, "[P]roviding stable homes for children is undoubtedly a legitimate governmental interest." (See id.)

Thus, the lynchpin of the Department's claim on this issue appears to be the following logical chain: (1) All children need stable homes, which includes close interpersonal relationships and a loving homelife; (2) Eliminating an inheritance tax exemption will incentivize close interpersonal relationships; (3) Therefore, the State has a legitimate interest in eliminating an inheritance tax exemption for some, but not all, stepchildren.

There are at least two problems with this rationale. First, it is exceedingly difficult to believe that a reasonable legislature would hope to create a "stable, loving homelife" through inheritance tax statutes (the second numbered proposition). This has been discussed at length by Paula and Mark

in previous briefing and need not be recited again here. At times, even the Department has evinced doubt that an inheritance tax statute can effect any meaningful change in relationships. (See, e.g., App. 134 at 33:8–13 ("I don't believe this exemption has any effect on the creation or the termination of any of these legal relationships listed in Section 450.9."); see also id. at 34:20–35:25.) Suffice to say that the inheritance tax itself only operates **after a matriarch or patriarch dies**, i.e., after a child is bereft of a parent by death and that part of the family unit is gone. There is simply no logical connection between the means and ends in the second proposition.

Moreover, the conclusion does not follow from the premises. If the Iowa Legislature's ability to distinguish between types of stepchildren takes its legitimacy from the State's "proper child-rearing" or "home stability" interests, then one might expect the Legislature's distinctions to be based on either the **age** of the devisee (with minors receiving an inheritance tax benefit that adults do not) or the **residence** of the testator and devisee (with cohabitating testators and devisees receiving an inheritance tax benefit that others do not). This is not the case, and the claimed State interests are simply incompatible with the outcome.

To accept the Department's position is to agree that the State's "stable homelife" interest, which developed in the termination-of-parental-rights context, gives the Legislature the right to regulate, tax, and exempt **any matter** that affects an interpersonal or legal-relational interest. Such a justification knows no limitation and, in fact, would render Iowa's Equal Protection Clause a nullity in cases of rational basis review. Finally, it is significant that the "close personal relationship" rationale is unknown to the law and unsupported by any direct legal authority, whether binding or persuasive.

Thus, Paula and Mark maintain that Iowa's law of inheritance tax arbitrarily and unconstitutionally discriminates between two classes of individuals: (a) stepchildren whose parents divorced prior to a decedent-stepparent's death, and (b) stepchildren whose parents remained married until the death of either parent. See Iowa Code § 450.1(1)(e) (2014). Because this distinction lacks a sufficient justification under the Iowa Constitution, the Court should find that the law is invalid and unenforceable.

## CONCLUSION

For these reasons, Appellants, Paula J. Tyler and Mark J. Alcorn, respectfully request that the Court reverse the decisions of the lower courts,

find that the definition of "stepchild" in Iowa Code section 450.1(1)(e) violates the Equal Protection Clause of the Iowa Constitution, and award Appellants their due refund in the amount of $202,755 plus interest and the costs of this action pursuant to 701 Iowa Administrative Code 7.17(12).

## CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this Brief contains 1,693 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally-spaced typeface using Microsoft Word in Times New Roman size 14 font.

Respectfully submitted,

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## CERTIFICATE OF FILING

The undersigned certifies that on the 20th day of March, 2017, the undersigned electronically filed this document using the Electronic Document Management System.

*/s/ Erich Priebe*

## CERTIFICATE OF COST

The undersigned certifies that the cost for printing or duplicating necessary copies of this brief in final form was **$0.00**.

*/s/ Erich Priebe*

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**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon the Clerk of the Supreme Court and upon all parties to the above cause, to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on the 20th day of March, 2017.

By: ____ U.S. Mail ____ FAX
____ Hand Delivered ____ UPS
____ Federal Express ____ E-mail
__X__ EDMS Participant (Electronic Service)

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